

Tentative Rulings for October 19, 2020

Department 06

**To request oral argument, you must notify Judicial Secretary
Amy Estrada at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 6 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES MUST APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS. IN-PERSON APPEARANCES WILL NOT BE PERMITTED.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (213) 306-3065 or 1 (844) 621-3956 (Toll Free)
- Meeting Number: **803-052-139#**
- Press **#** again

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am>

1.

RIC1817493	MOLLIK VS. ADOMINI INC	HEARING RE: APPLICATION TO APPEAR PRO HAC VICE FOR M.D. ARIFUL MOLLIK BY LEAH HEIFETZ-LI.
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Tentative Ruling:

ANY REQUEST FOR ORAL AGUMENT SHALL BE HEARD AT 9AM

The Application is GRANTED.

2.

RIC1825310	ROBERTS VS COACHELLA VALLEY WATER DIS	MOTION TO/FOR QUASH NOTICE OF DEPOSITION AND MOTION FOR PROTECTIVE ORDER BY COACHELLA VALLEY WATER DISTRICT, COUNTY OF RIVERSIDE
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Tentative Ruling:

ANY REQUEST FOR ORAL AGUMENT SHALL BE HEARD AT 9AM

The Motion to preclude discovery is DENIED.

The Motion to Quash and Motion for Protective Order are DENIED.

3.

RIC1904616	GARCIA VS SUN RICH FRESH FOODS (USA) INC	MOTION TO/FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BY GLORIA GARCIA
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Tentative Ruling:

ANY REQUEST FOR ORAL AGUMENT SHALL BE HEARD AT 9AM

The hearing is continued to 11/19/20 at 8:30 am in Department 6 in order for plaintiff to correct the following deficiencies:

1. The declaration of Jodey Lawrence of Phoenix Settlement Administrators states in paragraph 10 that the administrative fee is fixed, but in Mr. Savoy's declaration the fee he states the fee "will not exceed" the sum of \$8,250.00, which implies that it could be less. Lawrence's attached breakdown of the costs (Exhibit B) also indicates the amount "will not exceed" the sum of \$8,250.00, again implying the amount could go down. The various documents identifying the costs—the Notice in particular and the proposed Order—need to identify the fee as either "fixed" (as it appears to be) or that it will not exceed the sum of \$8,250.00.

2. The definition of "Released Parties" in Section 1.32 of the Settlement Agreement includes more than just the defendants and their officers, directors, employees and agents, as required by Section H.3.e.i of the CMO. Section 1.32 will need to be revised to conform to the court's CMO. At present the Section 1.32 releases defendants and "any of their former and present parents, subsidiaries, affiliates, and/or related entities, and each of their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives."

The court will not approve of the expanded definition of “released parties” in Section 1.32 of the Settlement Agreement and plaintiff shall conform Section 1.32 to restricted scope set forth in the CMO. The description of “released parties” in the Notice shall also be revised.

3. Section 1.29 of the Settlement Agreement defines “Parties” as “Plaintiffs and Defendants.” Since there is only one plaintiff, the plural use of “plaintiffs” may be interpreted to include the class members. The word “plaintiffs” in Section 1.29 should be singular.

4. The definition of “Released Claims” in Sections 1.31 and 12.1 of the Settlement Agreement is not limited to the claims and facts alleged in the complaint, as required by Section H.3.e.ii. The Settlement Agreement defines “Released Claims” as “all claims alleged in the Action during the Settlement Period, including those claims that could have been alleged in the Action....” The CMP requires the released claims to be limited to “the claims stated in the complaint and those based solely upon the facts alleged in the complaint.” The definition of Released Claims shall conform to the CMO.

5. Section 12.1 of the Settlement Agreement expands the release to include a release of claims under Labor Code section 206.5 and shall be deleted.

6. The second sentence of Paragraph 12 of the proposed Order shall be stricken. The second sentence of paragraph 12 gives counsel for the parties the authorization to “utilize all reasonable procedures” regarding the administration that are not “materially inconsistent” with the Order or the Settlement Agreement. This gives counsel the right to decide what actions are materially inconsistent and, for that reason, shall be stricken.

7. The proposed Notice includes the class members’ estimated settlement amount in Section D, so there is no need for statement of the average recovery. However, since the amount will vary due to the likely differences in the number of pay periods worked by class members, the range of possible recoveries must be stated. (CMO, H.5.a.)

8. The proposed Notice does not comply with Section H.5.b of the CMO. The last sentence of Section II of the Notice states that the “Parties believe” the settlement is “fair, adequate, and reasonable” rather than the required statement.

9. There is no statement regarding the location in the court file or the website in Section VI of the Notice. (CMO, H.5.c.) While there is a reference to the court’s physical location, there is no reference to the court’s website or the location of the Settlement Agreement in the court file—e.g., attached as Exhibit A to the declaration of Grant Joseph Savoy filed on 9/24/20.

10. The Notice uses the term “Settlement Administrator” while the exclusion, objection and pay period dispute forms use the term “Claims Administrator” even though there is no “claims” process. The term “Claims Administrator” shall be changed to Settlement Administrator. (CMO, H.5.d.)

11. The Notice includes a description of the release, but, as discussed above, the release must be modified to conform to the CMO, so the release in Section V of the Notice must be amended.

12. Section IV is inconsistent with the Objection Form and the Request for Exclusion Form. Option 2 of Section IV of the Notice describes an “opt out” procedure, but never identifies the Request for Exclusion Form attached to the Notice. Option 2 also imposes requirements (last 4 of social security number) that are not on the Form. The Notice should just reference the form attached after describing the purpose of the Form. The same defect occurs with the Objection procedure discussed in Option 3 of Section IV of the Notice; in particular, there is no reference to the Objection Form attached to the Notice.